

Part 1 General Provisions

57-8a-101 Title.

This chapter is known as the "Community Association Act."

Enacted by Chapter 153, 2004 General Session

57-8a-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Assessment" means a charge imposed or levied:
 - (i) by the association;
 - (ii) on or against a lot or a lot owner; and
 - (iii) pursuant to a governing document recorded with the county recorder.
 - (b) "Assessment" includes:
 - (i) a common expense; and
 - (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
- (2)
 - (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:
 - (i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and
 - (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
 - (A) real property taxes;
 - (B) insurance premiums;
 - (C) maintenance costs; or
 - (D) for improvement of real property not owned by the member.
 - (b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.
- (3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.
- (4) "Common areas" means property that the association:
 - (a) owns;
 - (b) maintains;
 - (c) repairs; or
 - (d) administers.
- (5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.
- (6) "Declarant":
 - (a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and
 - (b) includes the person's successor and assign.
- (7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.
- (8) "Gas corporation" means the same as that term is defined in Section 54-2-1.
- (9)
 - (a) "Governing documents" means a written instrument by which the association may:

- (i) exercise powers; or
 - (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.
- (b) "Governing documents" includes:
 - (i) articles of incorporation;
 - (ii) bylaws;
 - (iii) a plat;
 - (iv) a declaration of covenants, conditions, and restrictions; and
 - (v) rules of the association.
- (10) "Independent third party" means a person that:
 - (a) is not related to the owner of the residential lot;
 - (b) shares no pecuniary interests with the owner of the residential lot; and
 - (c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.
- (11) "Judicial foreclosure" means a foreclosure of a lot:
 - (a) for the nonpayment of an assessment; and
 - (b)
 - (i) in the manner provided by law for the foreclosure of a mortgage on real property; and
 - (ii) as provided in Part 3, Collection of Assessments.
- (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
 - (a) by a person or persons other than the owner; and
 - (b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.
- (13) "Limited common areas" means common areas described in the declaration and allocated for the exclusive use of one or more lot owners.
- (14) "Lot" means:
 - (a) a lot, parcel, plot, or other division of land:
 - (i) designated for separate ownership or occupancy; and
 - (ii)
 - (A) shown on a recorded subdivision plat; or
 - (B) the boundaries of which are described in a recorded governing document; or
 - (b)
 - (i) a unit in a condominium association if the condominium association is a part of a development; or
 - (ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.
- (15)
 - (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.
 - (b) "Means of electronic communication" includes:
 - (i) web conferencing;
 - (ii) video conferencing; and
 - (iii) telephone conferencing.
- (16) "Meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.
- (17) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.
- (18) "Nonjudicial foreclosure" means the sale of a lot:
 - (a) for the nonpayment of an assessment; and
 - (b)

- (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and
 - (ii) as provided in Part 3, Collection of Assessments.
- (19) "Period of administrative control" means the period during which the person who filed the association's governing documents or the person's successor in interest retains authority to:
- (a) appoint or remove members of the association's board of directors; or
 - (b) exercise power or authority assigned to the association under the association's governing documents.
- (20) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

Amended by Chapter 22, 2015 General Session
Amended by Chapter 34, 2015 General Session
Amended by Chapter 213, 2015 General Session
Amended by Chapter 325, 2015 General Session
Amended by Chapter 387, 2015 General Session

57-8a-103 Scope of chapter.

Remedies provided in this chapter, by law, or in equity are not mutually exclusive.

Enacted by Chapter 153, 2004 General Session

57-8a-104 Limitation on requirements for amending governing documents -- Limitation on contracts.

- (1)
 - (a)
 - (i) To amend the governing documents, the governing documents may not require:
 - (A) for an amendment adopted after the period of administrative control, the vote or approval of lot owners with more than 67% of the voting interests;
 - (B) the approval of any specific lot owner; or
 - (C) the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association.
 - (ii) Any provision in the governing documents that prohibits a vote or approval to amend any part of the governing documents during a particular time period is invalid.
 - (b) Subsection (1)(a) does not apply to an amendment affecting only:
 - (i) lot boundaries; or
 - (ii) lot owner's voting rights.
- (2)
 - (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association during a period of administrative control is binding beyond the period of administrative control unless terminated by the board of directors after the period of administrative control ends.
 - (b) Subsection (2)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.
- (3) Voting interests under Subsection (1) are calculated in the manner required by the governing documents.
- (4) Nothing in this section affects any other rights reserved by the person who filed the association's original governing documents or a successor in interest.

(5) This section applies to an association regardless of when the association is created.

Amended by Chapter 34, 2015 General Session

Amended by Chapter 325, 2015 General Session

Amended by Chapter 387, 2015 General Session

57-8a-105 Registration with Department of Commerce.

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2)

(a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5)

(a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4):

(i) a lien may not arise under Section 57-8a-301; and

(ii) an association may not enforce an existing lien that arose under Section 57-8a-301.

(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association ends a period of noncompliance:

(i) a lien may arise under Section 57-8a-301 for any event that:

- (A) occurred during the period of noncompliance; and
- (B) would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements described in this section; and
- (ii) an association may enforce a lien described in Subsection (5)(e) or a lien that existed before the period of noncompliance.
- (f) If an owner's residential lot is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):
 - (i) a lien that arose under Section 57-8a-301 before the conveyance of the residential lot became final is extinguished when the conveyance of the residential lot becomes final; and
 - (ii) an event that occurred before the conveyance of the residential lot became final, and that would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8a-301 if the conveyance of the residential lot becomes final before the association ends the period of noncompliance.

Amended by Chapter 95, 2013 General Session

57-8a-106 Fee for providing payoff information needed at closing.

- (1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, an association may not charge a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.
- (2) An association may not:
 - (a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or
 - (b) charge the fee if it exceeds \$50.
- (3)
 - (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.
 - (b) A request under Subsection (3)(a) is not effective unless the request:
 - (i) is conveyed in writing to the primary contact person designated under Subsection 57-8a-105(3)(d);
 - (ii) contains:
 - (A) the name, telephone number, and address of the person making the request; and
 - (B) the facsimile number or email address for delivery of the payoff information; and
 - (iii) is accompanied by a written consent for the release of the payoff information:
 - (A) identifying the person requesting the information as a person to whom the payoff information may be released; and
 - (B) signed and dated by an owner of the lot for which the payoff information is requested.
- (4) This section applies to each association, regardless of when the association is formed.

Amended by Chapter 369, 2012 General Session

57-8a-107 Amending the declaration to make provisions of this chapter applicable.

- (1) An association may amend the declaration to make applicable to the association a provision of this chapter that is enacted after the creation of the association, by complying with:

- (a) the amendment procedures and requirements specified in the declaration and applicable provisions of this chapter; or
 - (b) the amendment procedures and requirements of this chapter, if the declaration being amended does not contain amendment procedures and requirements.
- (2) If an amendment under Subsection (1) adopts a specific section of this chapter:
- (a) the amendment grants a right, power, or privilege permitted by that specific section; and
 - (b) all correlative obligations, liabilities, and restrictions in that section also apply.

Enacted by Chapter 152, 2013 General Session

57-8a-108 Rules against perpetuities and unreasonable restraints -- Insubstantial failure to comply.

- (1) The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of a governing document.
- (2)
- (a) A declaration that fails to comply with this chapter does not render a title to a lot and common areas unmarketable or otherwise affect the title if the failure is insubstantial.
 - (b) This chapter does not affect whether a substantial failure impairs marketability.

Enacted by Chapter 152, 2013 General Session

57-8a-109 Limit on fee for approval of plans.

- (1) As used in this section:
- (a) "Lot plans" means plans:
 - (i) for the construction or improvement of a lot; and
 - (ii) that are required to be approved by the association before the lot construction or improvement may occur.
 - (b) "Plan fee" means a fee that an association charges for review and approval of lot plans.
- (2) An association may not charge a plan fee that exceeds the actual cost of reviewing and approving the lot plans.

Enacted by Chapter 152, 2013 General Session